IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, CIVIL JURISDICTION

WRIT PETITION NO.2092 OF 1992

1.Vaman Ramlal Naik, Age about 32 years, Occ. Business, Resident of 545, Mahatma Phule Peth, Pune-2.
2.Prakash Ramlal Naik, Age about 29 years, Occ. Nil, R/at. Purpidhi Quarters, Qur No.619, Hingaghat, Dist. Wardha. ..PETITIONERS

Versus

1.Smt.Dagadabai Baburao Karande, Age 60 years, Occ. Household, Res. at 545, Mahatma Phule Peth, Pune-2, deceased by her heirs:-
(a) Sou.Sulochana Haribhau Shinde, (Married daughter) age about 55 years) Occ. Household, R/at.Maharashtra Housing Board Building I-49, Pune-16.
(b) Sou.Subhadra Ananda Abnave, (maried daughter) age 47 years, Occ. Household, Res. Lohiya Nagar, Zopadpatti, Ganj Peth, Pune.
(c)Shri Gorakhanath Baburao Karande, Age 45 years, Occ. Service, Resi.454 Upper Indira Nagar, Bibavewadi, Pune
(d)Smt. Pramiba Babna Pachole, Age 42 Occ. Household, 17/5, Dhankavedi Pune.
(e)Shri Lalchan Baburao Karande, Age 38 years, Occ. Service, Resi. 545, Ganj Peth, Pune.
(f)Sou. Nirmala Baburao Raut, Age about 35 years, Occ. Household, Resi. at Mohamad Wadi, Near Ranuka Hotel, Hadapsar, Pune.
(g)Shri Sachin Kalidas Karande, Age about 18, Occ. Education, Res.L-4/58 Laxminagar, Near Shahu College, Housing Board Society, Pune-9.
(h)Kum.Nitin Kalidas Karande, Age about 15 years, Occ. Education, Res. L-4-58, Laxminagar, Near Shahu College,Housing Board Society, Pune 9 by his G.A.L.mother Smt.Shalinibai Karande, Addres same as above. ..RESPONDENTS

Ms.Suhasini Mutalik, for the Petitioners.
Mr. D.S. Sawant, for Respondent No.A to H.

CORAM: ANOOP V. MOHTA, J.
DATE : 3rd August,2005.

JUDGMENT:

1. The petitioner-landlords have invoked Article 227 of the Constitution of India and sought to challenge the judgment and order dated 31st October, 1991 passed by the Additional District Judge, Pune (Appellate Court) whereby the Respondents-tenants' Appeal was allowed and the judgment and decree passed by the IV Additional S.C. Judge, Pune (trial Court) dated 27th April, 1989 was set aside, which resulted into dismissal of the suit filed by the petitioners on the ground of default and bonafide need as contemplated under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short Bombay Rent Act). Therefore, the present petition by the petitioners-landlords. The Respondents are tenants. The premises is situated at Mahatma Phule Peth, Pune admeasuring 6' x 12' on the ground floor. By notice dated 24th February, 1982 the arrears of rent were demanded and tenancy was terminated also on the ground of bonafide need. No arrears were paid within one month nor any application for standard rent was filed. In the earlier suit also the respondents never deposited the rent. The parties led evidence. The learned trial Court after considering the material placed on record held that the petitioners-landlords proved the ground of default and bonafide and reasonable need and, therefore, considering the comparative hardship, granted decree of possession in favour of the petitioners-landlords. The Appellate Court, however, after considering the rival contentions raised by the parties has allowed the Appeal and held that the Respondents-tenants are not defaulters and also rejected the petitioners' case of bonafide and reasonable need considering the material on record including the issue of greater hardship. The Appellate Court has also held that the

Respondents are tenants of the suit premises and that has resulted into dismissal of the suit filed by the petitioners.

2. Heard learned Ms. Suhasini Mutalik for the Petitioners and Mr. D.S. Sawant for the Respondents.

3. The learned Appellate Court was right in concluding that for want of specific pleadings and supporting material on record and denial of the title of the Plaintiffs as observed by the trial Court that itself is not sufficient to hold that the Defendants-Respodnents-Tenants had denied the title of the Petitioners-plaintiffs. In the cases where the Respondents-tenants after the death of the original landlord and in the cases where there are more than one co-owner and paid the rent to one co-owner-landlord and refused to pay rent to another co-owner-landlord that itself cannot be the reason to consider the case of the petitioners-landlords that the Defendants-Respondetns had denied the title and/or ownership of the landlords. In the present case admittedly there was no specific pleadings of the petitioners-landlords that the Defendants-Respondents had denied their title as observed by the trial Court. In such situation the judgment of the Apex Court as relied upon by the learned Counsel appearing for the petitioners-landlords in Majati Subbarao vs. P.V.K. Krishna Rao (Deceased) by L.Rs., (1989) SCC 732 in no way helps to support the submission of the petitioners and the reasoning given by the trial Court as the facts are distinct and distinguishable. There was specific pleadings which was resisted in that matter. Therefore, it cannot be said that the Respondents-tenants have denied the title of the

petitioners-landlords. It is also clear from the record and as contended by the Respondents-tenants that the premises was let out to them by one Bapurao who was the uncle of the plaintiffs and after the death of the said Baburao the Respondents used to pay the rent to the sister of Baburao Smt.Shantaben, who used to issue the receipts. The Respondents-tenants paid the taxes of the suit premises. In this background the respondents refused to accept the petitioners as their landlords. There is a clear finding given by the Appellate Court that the said House No.545 was owned by one Sakhubai Pardeshi and the said fact gets corroborated from the entry in Exhibit 40 dated 22bd May, 1972. Therefore, the Appellate Court has rightly observed that the petitioners-plaintiffs were suppressing the material facts and wrongly contended that the house in question was owned by their father and their father was collecting the rent from the respondents-tenants. The names of the Petitioner Nos. 1 and 2 i.e. Plaintiff No.1 and 2 are entered with the consent of Shantabai.

4. In J.J. Lal Pvt. Ltd. & Ors. v. M.R. Murali & Anr., AIR 2002 SC 1061 the Apex Court in a bonafide dispute raised by the tenant about the title of the landlord and in the facts and circumstances of the case, observed that in the absence of specific plea merely there is a denial of the landlord's title that itself , is not sufficient to grant a decree to the landlord on that ground. The requirement is the tenants pleading and/or denial of the title must be bonafide with supporting material to substantiate the the same. The

Apex Court has observed in this regard as under:-

> "18. What amounts to denial of title, and whether such denial is bona fide or not are the questions to be determined in the facts and circumstances of each case.
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> .....However, the rule of estoppel contained in Section 116 of the Evidence Act is not exhaustive. To operate against the tenant as providing a ground for eviction under Section 10 of the Act a mere denial of the title of the landlord is not enough, such denial has to be not bona fide. Not bona fide would mean absence of good faith or non genuiness of the tenant's plea."

The Apex Court then in para.21 observed as under:-

> "21. On the pleadings and the material placed before us we cannot hold that the tenants had denied the title of their landlords and whatever they had stated in their additional counter was a denial 'not bona fide' so as to render them liable for a direction to deliver possession to the landlords."

5. So far as bona fide need is concerned, the Appellate Court rightly observed that pending the litigation the landlords received possession of one room from one tenant Doma. Based on an affidavit Exhibit 18 filed in the Appeal by one Chavan it is also observed that one tenant A.C. Shinde

surrendered the possession of one room to the Petitioners-plaintiffs. One Sanjay More has surrendered a premises in December, 1989. Apart from the above, in the present case petitioner No.1 is making out a case that petitioner No.2, his brother needs the premises for starting business. There is a material on record that Plaintiff No.2 is residing at Hingaghat, but he wants to start some business at Pune. His application is for possession of the suit premises. The Appellate Court also observed that there is nothing on record to justify that the petitioner No.2 residing at Hinganghat wants to start business at Pune and is not doing any work or business. Petitioner No.1 initially moved this application on the foundation that they need the premises for their own use and occupation and later on insisted that they need the premises for the business of Plaintiff No.2. Apart from this vague foundation of bonafide need the three premises of which they got possession pending the litigation, as referred to and as observed by the Appellate Court, but not taken into account by the trial Court, according to me also substantiate the submission made by the learned Counsel appearing for the respondents-tenants. This subsequent event pending such suit has rightly taken note of when the parties are contesting the issue of bonafide need and the issue of greater hardship. In the present case the Appellate Court, therefore, is right in reversing the decree for possession on these grounds. As observed by the Appellate Court that after the death of the original Defendant his heirs are living in the premises in question. As the petitioners have acquired possession of additional rooms, the issue of comparative hardship also tilts in favour of the respondents-tenants and

it goes against the petitioners-landlords.

6. The Appellate Court in the facts and circumstances of the case was right in holding that there was no default committed by the respondents-tenants. As referred to above, there is material on record that they were paying the rent to one Shantabai and also deposited the various taxes of the suit premises as per notice issued by the Municipal Corporation. The Appellate Court, therefore, after considering the material on record rightly negatived the issue of defaulter in para.9 of the judgment. The further observation is that the petitioners-plaintiffs failed to prove that the respondents-tenants were not ready and willing to pay the rent specifically in view of the controversy about the ownership as referred to above and as observed by the Appellate Court. The decision, therefore, relied upon by the petitioners in Ramchandra Bhau Marathe v. Smt. Shaila Marutirao Naik, 2002 (2) Mh.L.J. 716 nowhere helps and/or assists the submission made by the petitioners-landlords. In that case no objection was raised to the demand notice and there was no such dispute of such rent and/or ownership of the property in question. In that case there was no such contention about the entitlement of the petitioners towards arrears of rent from the Respondents.

7. Taking all these into account and as there is no perversity or illegality pointed out and as the view taken by the Appellate Court is plausible and within the frame work of law, I see no case made out to interfere with the finding recorded by the Appellate Court on all counts.

8. In the result petition is dismissed. Rule discharged.

No order as to costs.

(ANOOP V. MOHTA, J.)